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Attorney for: ADONIS TORRES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) No. CR 20-0480-06 WHA
Plaintiff,)
vs.) **ADONIS TORRES'**
ADONIS TORRES) **SUPPLEMENTAL**
Defendant.) **SENTENCING MEMORANDUM**
)
) Date: March 1, 2022
) Time: 2:00 p.m.
) Courtroom: The Honorable
) Judge Alsup

The defense sentencing memorandum (dkt. 192), p.2, pointed to a "significant error" in the Justification section of the PSR. Regrettably, the significant error was instead that of below signed counsel. The PSR was correct about the prior convictions. The three that were overlooked by counsel weren't counted on Mr. Torres' CH score because they were timed out from consideration under the Guidelines.

The first, at PSR paragraph 38, occurred more than 16 years ago, when Mr. Torres was 18 years old. It involved \$20 of cocaine. The

1 second (paragraph 39) occurred a year later and was charged as a
2 misdemeanor, involving possession for sale of cocaine base. The
3 third (paragraph 40) was an illegal entry conviction in 2010.

4 In view of these timed out convictions - and despite their
5 nature - the argument that Mr. Torres' CH 2 was overstated is
6 withdrawn.
7

8 The government's sentencing memorandum concentrates
9 significantly on arguing against a minor role adjustment for Mr.
10 Torres. However, although we asserted the minor role during plea
11 negotiations and the PSR process, we are not now arguing for that
12 two-point adjustment and didn't do so in the defense sentence
13 memorandum. We acknowledge that Mr. Torres was not "substantially
14 less culpable" than his codefendants. However, he was less
15 culpable.
16

17 The government concedes that Mr. "Torres did not participate in
18 higher-level planning or organizing of the overall conspiracy, and
19 he did not exercise decision-making authority over others." *Dkt.*
20 193 at 4. However, the government points out that he knew the
21 general scope and structure of the organization, "including that
22 Leydis was one of the main drug sources." Of course, he did.
23 Leydis was his more culpable girlfriend's mother. The other
24 codefendants also knew the organization's structure.
25

26 Maldonado, the fugitive who the government places at the bottom
27 (*id.*) lived with Mayorquin, who the government places at the top,
28
29

1 with Leydis. According to the complaint and incorporated affidavit
2 the government filed to start this court case, Ms. Maldonado is
3 heard discussing 324 grams that she weighed out at Cruz's request.
4 Maldonado says it's the "yellow" and a little of the "blue."
5 According to the government, these were code words for types of
6 fentanyl. *Dkt. 1* at 13. This is four times the amount of fentanyl
7 that the government notes Mr. Torres was arrested with. *Dkt. 193*
8 at 7.

10 The government asserts that Mr. Torres is at the same level of
11 culpability as Benegas and Ivan Cruz. *Dkt. 193* at 5. Yet,
12 according to the government's complaints, both were heard on heard
13 on the wire supplying fentanyl to the upper-level suppliers. *Dkt.*
14 1 at 12-13; *Dkt. 1* at 5 (CR20-480-7.) One of them also apparently
15 recruited another coconspirator. *Dkt. 1* at 12-13. We are not aware
16 of evidence that Mr. Torres recruited others or supplied drugs to
17 those above him.

20 CONCLUSION

21 The conclusion of our first sentencing memorandum still applies:
22 Principles of codefendant disparity should lead this Court to
23 sentence Mr. Torres to no more than any of his codefendants
24 receive. Even without that disparity, the Court's concern about
25 the ravages of fentanyl should be balanced with Mr. Torres'
26 motivation to engage in this crime, as well as his own sad
27 history.

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2 Respectfully submitted,
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4 Date: February 24, 2022
5 /s/
6 Brian P Berson
7 Attorney for Adonis Torres
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